

[\*Saporito v. Arizona Public Service Co.\*, 93-ERA-26 \(ALJ\)](#)

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IN THE MATTER OF:

Thomas J. Saporito, Jr.  
Complainant

v.

Case Nos.: 93-

ERA-26

93-ERA-45  
Arizona Public Service Co.  
Arizona Nuclear Power Project  
The Atlantic Group, Inc.  
Respondents

**ORDER NO. 1 - ON REMAND OF CASES  
93-ERA-26 AND 93-ERA-45 by the  
SECRETARY OF LABOR**

On February 8, 1994 this Court issued its Recommended Decision and Order in the above entitled cases which was submitted to the Secretary. On March 21, 1994 the Secretary issued his final Decision and Order Approving the settlements and dismissing the cases 92-ERA-30, 93-ERA-26 and 93-ERA-45. On April 21, 1994 Mr. Saporito made a motion to the Secretary for a briefing schedule regarding claims remaining against the Atlantic Group (TAG) or in the alternative, for reconsideration of the Secretary's Decision and Order of March 21, 1994.

On May 19, 1994 the Secretary issued his order rescinding his approval order of March 21, 1994 and remanded these cases to the respective Administrative Law Judges for reconsideration and clarification of the recommended orders approving the settlement agreement of the parties.

The Secretary directs that the Administrative Law Judge submit

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new recommended orders clarifying the scope of the settlement agreement and extent to which any claims by complainant against any of the respondents remain unresolved by that agreement.

Keeping in mind the Secretary's directive I have reviewed the files in cases 93-ERA-26 and 93-ERA-45 and make the following findings as the basis for this Order No. 1:

1. The Settlement Agreement executed by the parties and submitted to me for recommended approval by the Secretary is entitled thus:

Settlement Agreement  
(92-ERA-30, 93-ERA-26, 93-ERA-45;  
Claim filed with U.S. Department of Labor on  
October 23, 1993).

2. The cases over which I have jurisdiction and are assigned to me for determination and disposition are 93-ERA-26 and 93-ERA-45.

3. The settlement agreement covers/includes 93-ERA-26 and 93-ERA-45 and is between and signed only by Arizona Public Service Company (APS) and Mr. Saporito.

4. *Settlement Agreement*

In Case 93-ERA-26 and 93-ERA-45

a. APS Agrees to pay damages to Saporito.

b. Saporito agrees to dismiss with prejudice

1. any and all claims or actions he has  
against APS

2. any and all claims or actions he has  
against TAG, relating in any way to  
Saporito's employment with or wanting to  
obtain employment with TAG at APS's Palo  
Verde Nuclear Generating Station ("PVNGS")

c. Saporito agrees to execute General Releases which  
are attached to the settlement agreement as  
Appendices A & B.

*Appendix A* - general release signed by Saporito and  
APS

*Appendix B* - general release signed only by Saporito

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wherein he releases TAG from any claim he has relating  
to his employment by TAG at PVNGS or failure to employ  
Saporito at PVNGS.

This release is in consideration of the settlement  
agreement between Saporito and APS.

- Appendix B contains the following caveat in paragraph  
"H" appearing on page 4

"This release of claims against TAG does not  
limit or restrict Saporito from pursuing or  
filing any past, present or future claims of  
any nature whatsoever, whether based on tort,  
contract, or any other theory of recovery,  
against TAG for TAG's alleged failure to

employ Saporito with employers other than APS,  
and/or at sites other than Palo Verde Nuclear  
Generating Station."

It is quite clear that the basic intent of the settlement by the parties to the agreement was to settle all issues and claims between Saporito and APS. At the same time, Saporito was allowed to preserve the right to proceed against TAG in any claim not related to Saporito's working for TAG at the APS facility identified as the Palo Verde Nuclear Generating Station. However, on reading paragraphs F and G of Appendix B I can construe that Saporito intended to release TAG from all claims which arose prior to the execution of the release on December 15, 1993.

On January 10, 1994 I issued an "Order Following Conference Call Hearing - Granting Continuance". In this Order, paragraph 6 stated "The Court retains jurisdiction in Cases Number 93-ERA-00026 and 93-ERA-00045." The retention of jurisdiction as stated in paragraph 6 resulted from the representation to this Court by the parties at that time that "the Complainant desires to file an amended complaint necessitated by the proceedings in settlement as Complainant intends to proceed against The Atlantic Group alone in both cases 93-ERA-26 and 93-ERA-45. Such amended complaint was to be filed promptly in each case.

Complainant never did file the amended complaint. It appears that he has been pursuing his complaint against TAG et al. dated October 23, 1993 and a complaint against TAG alone dated February 26, 1994, as indicated to this Court by copies of correspondence received from the U.S. Department of Labor, Employment Standards Administration wherein the District Director states he has been asked to investigate those two claims under the Nuclear Regulatory

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Act.[1]

#### *ORDER*

From the above findings this Court makes the following conclusions and issues this Order:

1. This Court has no jurisdiction which extends beyond the date of this Court's Decision and Order recommended to the Secretary in cases 93-ERA-26 and 93-ERA-45, and issued on February 8, 1994.
2. This Court rescinds its retention of jurisdiction expressed in paragraph 6 of its Order Following Conference Call - Hearing - Granting Continuance, which Order is dated January 10, 1994 wherein paragraph 6 states "the Court retains jurisdiction in cases number 93-ERA-00026 and 93-ERA-00045."
3. All parties and counsel are directed to submit a response to this Order indicating their agreement with the findings expressed herein above or stating any alternative position which will assist this Court in

complying with the directive of the Secretary.

4. Saporito and his counsel are directed to state to this Court the Complainant's present position as to the scope of the settlement agreement and the extent to which any claims by Complainant against any of the respondents remain unresolved by the settlement agreement.

5. Complainant Saporito and his counsel are directed to state to this Court the extent, if any, or to which the claims dated October 23, 1993 and February 26, 1994 relate to 93-ERA-26 and 93-ERA-45 and/or to the settlement agreement.

6. All responses by the parties and their counsel are to be submitted to this Court on or before August 15, 1994 with copies sent to opposing counsel.

7. After all responses have been reviewed by this Court, I will then determine whether a phone conference should be scheduled for necessary discussion for clarification of the recommended decision prior to submission to the Secretary by this Court in cases 93-ERA-26 and 93-ERA-45.

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CLEMENT J. KICHUK  
Administrative Law Judge

Dated:  
Boston, Massachusetts  
CJK:dr

[ENDNOTES]

[1] Correspondence was received by this office from District Director William T. Marucca on June 27 and 28, 1994.